

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SALIM MOUSA BAYOUK,

Defendant-Appellant.

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UNPUBLISHED

July 8, 1997

No. 187834

Recorder's Court

LC No. 94-008326-FH

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to ten to fifteen years' imprisonment and two years' consecutive imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court improperly concluded at sentencing that he was guilty of first-degree murder despite the fact that the jury convicted him of the lesser offense of voluntary manslaughter. The trial court properly found, by a preponderance of the evidence produced at trial, that defendant acted with premeditation and deliberation in shooting the victim. *People v Purcell*, 174 Mich App 126, 130-131; 435 NW2d 782 (1989). Although the jury did not convict defendant of first-degree murder, the trial court was able to take all of the facts of this case into account in its sentencing decision and conclude that aggravating factors were present. *People v Shavers*, 448 Mich 389, 393-394; 531 NW2d 165 (1995); *People v Granderson*, 212 Mich App 673, 678-679; 538 NW2d 471 (1995).

Defendant also argues that his sentence for voluntary manslaughter is disproportionate. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The trial court departed from the sentencing guidelines' recommended range of one to five years, which is an indication that the sentence may be disproportionate. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). When a trial court departs from the guidelines because of the special characteristics of the offense or the offender, it

must specifically explain those characteristics. *People v Stone*, 195 Mich App 600, 608; 491 NW2d 628 (1992).

Based upon the severity of this offense, the trial court did not err in departing from the guidelines. The guidelines did not take into account the aggravating circumstances of the offense. Accordingly, even if defendant had no prior record, the severe nature of the offense supported the trial court's decision to depart from the guidelines. *Granderson, supra* at 680-681. Furthermore, the extent of the departure was also not disproportionate.

In relation to his argument about the departure from the guidelines, defendant also asserts that the trial court did not properly articulate its reasons for departing from the guidelines. As discussed above, the trial court cited the severity of the offense as its reason for exceeding the guidelines. This satisfied the articulation requirement. *People v Broden*, 428 Mich 343, 350-351; 408 NW2d 789 (1987); *Stone, supra* at 608.

Defendant also argues that the trial court was unclear about his maximum sentence. There is a clerical error on the Sentencing Information Report where defendant's actual maximum sentence was reported to be twenty years. However, the trial court imposed a maximum sentence of fifteen years on both the judgment of sentence and on the record at sentencing. Because courts speak through their orders and the court's final order was correct, any error does not require resentencing. See *People v Carlos Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993).

Next, defendant argues that his sentence for voluntary manslaughter amounts to cruel or unusual punishment under the state constitution, Const 1963, art 1, § 16. We disagree. As discussed previously, defendant's sentence is proportionate to the circumstances of this crime. Because the sentence is proportionate under the *Milbourn* standard, it does not constitute cruel or unusual punishment. *People v Samuel Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). Defendant has not otherwise shown that his sentence constitutes cruel or unusual punishment. *People v Poole*, 218 Mich App 702, 715; 555 NW2d 485 (1996).

Finally, defendant argues that he is entitled to be resentenced before another judge. Because defendant is not entitled to a resentencing, we need not reach the merits of this issue.

Affirmed.

/s/ Jane E. Markey  
/s/ Kathleen Jansen  
/s/ Helene N. White